

2496

No. 11729

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

WESTERN AIR LINES, INC.,

Appellant,

vs.

LABOR COMMISSIONER OF THE DIVISION OF
LABOR LAW ENFORCEMENT, DEPART-
MENT OF INDUSTRIAL RELATIONS OF
THE STATE OF CALIFORNIA,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

NOV 14 1947

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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Los Angeles 14, Calif.

For Appellee:

PAULINE NIGHTINGALE

EDWARD M. BELASCO

503 California State Building

217 West First Street

Los Angeles 12, Calif. [1*]

BEFORE THE
NATIONAL MEDIATION BOARD

In the Matter of:

WESTERN AIR LINES, INC., —
INLAND AIR LINES, INC.,

and

AIR LINE MECHANICS DEPARTMENT,
UNITED AUTOMOBILE WORKERS OF
AMERICA, C.I.O.

AWARD

Acme Reporting Company
1748 Pennsylvania Ave., N. W.
Washington 6, D. C.
Phone: District 0622

[2]

BOARD OF ARBITRATION
APPOINTED UNDER RAILWAY LABOR ACT
TO ARBITRATE DIFFERENCES

BETWEEN

WESTERN AIR LINES, INC., —
INLAND AIR LINES, INC.,

and

AIR LINE MECHANICS DEPARTMENT,
UNITED AUTOMOBILE WORKERS OF
AMERICA, C.I.O.

Case No. A-2289; Arb. 66
No. 5598-O'C

Introduction :

On May 10, 1946, pursuant to the provisions of the Railway Labor Act, as amended, an arbitration agreement was entered into by and between the above-named parties. Copy of the agreement is set forth at large in the transcript of the record filed in the office of the Clerk of the District Court of the United States for the Southern District of California, and the original of which is filed in the office of the National Mediation Board under the above designated case number.

Pursuant to the agreement, Mr. Stanley W. Guthrie was designated arbitrator for the Western Air Lines, Inc., and the Inland Air Lines, Inc.; and Mr. Ross P. Althof was designated arbitrator for the employees represented by the Air Line Mechanics Department, United Automobile Workers of America, C. I. O. [3]

Subsequently, the air lines replaced Mr. Guthrie by Mr. Edward S. Shattuck, and the employees replaced Mr. Althof by Mr. William A. Gillespie. The arbitrators for the parties concerned, within the time required by law, selected Mr. Otto S. Beyer of Washington, D. C. as the third and neutral arbitrator of the Board.

Thereafter, on July 12th, the three arbitrators convened at Los Angeles, in the State of California, the place designated in the agreement for meeting, and organized themselves into a statutory Board of Arbitration, at which time Otto S. Beyer was designated as chairman.

The parties on that date and continuously on succeeding days, until and including the 23rd of July, appeared with their representatives and witnesses, and presented their evidence and arguments. At the conclusion of the presen-

tation of the evidence in the form of oral testimony and exhibits, the Board went into executive session, and after discussing and deliberating on the questions presented, made its award as contained hereunder.

Matters Submitted by Arbitration Agreement:

The matters submitted to the Board by the arbitration agreement related, 1, to wages; 2, to working conditions. [4]

Withdrawal of Issues:

The parties having agreed between themselves as to the rate of pay for crew chiefs, stipulated this fact to the Board. In addition, the parties agreed to withdraw from arbitration the dispute involving the rate of pay for plant protection men, and so stipulated to the Board.

Wages:

In the matter of the wage rates in dispute, the award of the Board is as follows:

Apprentice Mechanic:	1st 6 months	\$.78 per hour
	2nd 6 months	.86 per hour
	3rd 6 months	.94 per hour
	4th 6 months	1.02 per hour
	5th 6 months	1.10 per hour
	6th 6 months	1.18 per hour
Mechanics:	1st 6 months	\$1.26 per hour
	2nd 6 months	1.34 per hour
	3rd 6 months	1.40 per hour
Senior Mechanics:	1st 6 months	\$1.44 per hour
	2nd 6 months	1.50 per hour
	3rd 6 months	1.56 per hour

Lead Mechanics:	1st 6 months	\$1.58 per hour
	2nd 6 months	1.64 per hour
	3rd 6 months	1.70 per hour
Inspectors:	1st 6 months	\$1.64 per hour
	2nd 6 months	1.70 per hour
	3rd 6 months	1.76 per hour
Crew Chiefs:	\$1.80 per hour by stipulation of parties.	
Stock Chaser:	1st 6 months	\$.80 per hour
	2nd 6 months	.86 per hour
	3rd 6 months	.94 per hour
[5]		
Junior Stock Clerk:	1st 6 months	\$.82 per hour
	2nd 6 months	.88 per hour
	3rd 6 months	.96 per hour
Stock Clerk:	1st 6 months	\$1.04 per hour
	2nd 6 months	1.10 per hour
	3rd 6 months	1.14 per hour
Stock Clerk in Charge:	1st 6 months	\$1.16 per hour
	2nd 6 months	1.20 per hour
	3rd 6 months	1.24 per hour
Senior Stock Clerk:	1st 6 months	\$1.26 per hour
	2nd 6 months	1.28 per hour
	3rd 6 months	1.32 per hour
Cargo Handlers:	1st 6 months	\$.86 per hour
	2nd 6 months	.90 per hour
	3rd 6 months	.94 per hour
Assistant Cargo Clerk:	1st 6 months	\$.98 per hour
	2nd 6 months	1.02 per hour
	3rd 6 months	1.06 per hour

Cargo Clerk:	1st 6 months	\$1.10 per hour
	2nd 6 months	1.16 per hour
	3rd 6 months	1.20 per hour
Passenger Service Supply Clerk:	1st 6 months	\$.90 per hour
	2nd 6 months	.93 per hour
	3rd 6 months	.96 per hour
Senior Passenger Service Supply Clerk:	1st 6 months	\$1.00 per hour
	2nd 6 months	1.03 per hour
	3rd 6 months	1.06 per hour
Cleaner:	1st 6 months	\$.86 per hour
	2nd 6 months	.90 per hour
	3rd 6 months	.94 per hour
Chief Cleaner:	1st 6 months	\$.96 per hour
	2nd 6 months	1.00 per hour
	3rd 6 months	1.04 per hour
[6]		
Janitor:	1st 6 months	\$.86 per hour
	2nd 6 months	.90 per hour
	3rd 6 months	.94 per hour
Utility Man:	1st 6 months	\$1.10 per hour
	2nd 6 months	1.14 per hour
	3rd 6 months	1.18 per hour
Fleet Serviceman:	1st 6 months	\$.88 per hour
	2nd 6 months	.91 per hour
	3rd 6 months	.94 per hour
Plant Protection Man:	Withdrawn from arbitration by stipulation.	

In addition to the rates of pay as set forth above, employees required to work on the second or afternoon shift shall be paid an additional \$.04 per hour, and employees required to work on the third or night shift shall be paid an additional \$.06 per hour.

For purposes of determining the shifts on which employees have worked or may work, the following will apply:

1. Every shift which has heretofore or is hereafter started between 6:01 a. m. and 12:00 noon shall be considered as the first or day shift and all employees under this agreement who have heretofore commenced or who hereafter commence work on any such shift shall be paid both straight time and overtime at the first or day shift rate regardless of what hours were or are worked.

2. Every shift which was heretofore or is hereafter started between 12:01 p. m. and 6:00 p. m. shall be considered [7] as the second or evening shift, and all employees under this agreement who have heretofore commenced or who hereafter commence work on any such shift shall be paid both straight time and overtime at the second or evening shift rate regardless of what hours were or are worked.

3. Every shift which was heretofore or is hereafter started between 6:01 p. m. and 6:00 a. m. shall be considered as the third or night shift, and all employees under this agreement who have heretofore commenced or who hereafter commence work on any such shift shall be paid

both straight time and overtime at the third or night shift rate regardless of what hours were or are worked.

Working Conditions:

In the matter of the working conditions in dispute, the award of the Board is as follows:

1. Time worked in excess of 40 hours straight time in any one work week of seven consecutive days shall be considered overtime and shall be paid for at time and one-half, provided that time worked on the seventh day in any work week shall be paid for at double time if six consecutive days of eight hours straight time have been previously worked during that work week; and provided further that time not worked for the reasons listed below shall be considered as hours worked for the purpose of [8] this section:

(a) Sick leave with pay.

(b) Pre-arranged time off chargeable to sick leave credit.

(c) Death in the immediate family.

(d) Summoned by governmental agency on company business.

2. Time in excess of eight hours per day exclusive of meal periods for monthly-paid employees at stations other than Burbank, California, Salt Lake City, Utah, and Cheyenne, Wyoming, shall be considered overtime and shall be paid for at the rate of time and one-half in accordance with the provisions of this section.

3. (a) The following days are designated as holidays:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day
Washington's Birthday

(b) All employees hereunder shall be given the above holidays off with straight-time pay but if required to work on said holidays, the employee or employees shall be paid at the rate of double time.

(c) An employee required to work on said holidays and who fails to report for work shall not be paid any compensation for that day. [9]

(d) If any of the above holidays fall on the employee's regular scheduled days off, the following regular work day shall be observed as the holiday.

4. (a) Each employee hereunder, other than temporary or part-time employees, shall annually receive two weeks' vacation for each full year of service during the Company's vacation year from July 1 of any year to June 30 of the succeeding year. Pay for such two weeks' vacation shall be at the rate of pay which the employee would have normally received for working the regular time during the vacation period.

(b) New employees, other than temporary or part-time employees, with less than one year of continuous service

on July 1, each year will accrue such vacation leave to July 1 and will be entitled to take such leave when they have been in the continuous service of the company six months, computed as follows:

11 months of service	9 working days
10 " " " 	8 " "
9 " " " 	7 " "
8 " " " 	6 " "
7 " " " 	5 " "
6 " " " 	5 " "

Thereafter, on July 1 each year, they shall be entitled to two weeks' vacation with pay as provided in Paragraph (e).

(c) In computing the above vacation leave, regularly scheduled days off or holidays recognized under the terms of [10] this agreement occurring during the vacation leave period shall not be counted. Vacation leave will be taken on consecutive days and at such time as the employees' services can be spared during the period from July 1 to June 30 following the earned vacation period, unless special circumstances in individual cases warrant exceptions. Such cases shall receive the prior approval of the Personnel Manager. Vacation leave arrangements for personnel must be approved by the appropriate Supervisor at each location and by the Section Superintendent, and, except as otherwise specifically authorized, by an official of the Company, vacation leave is not cumulative and if not taken between July 1 and June 30 following the earned vacation period, the leave will be forfeited. In

the event of termination of employment with the Company for any reason whatsoever, employees who have been in the Company service for one year or more will be entitled to pay pro rata for vacation leaves which are accrued as of the date of termination.

5. An employee elected or appointed to conduct union business in the interest of air transport employees shall be considered good and sufficient reason for granting a leave of absence, provided that at any one time not to exceed four such employees shall be on leave of absence under the provisions of this section, and provided further that the foregoing restriction as to number on leave shall not be applicable to elected [11] delegates to the convention of the International Union.

Upon the written request, either from the Regional Director or the President of the International Union, U. A. W.-C. I. O., such employee shall be given a leave of absence for a period not to exceed one year. During such leave of absence seniority shall accumulate.

6. If a dispute arises between the Company and the employees covered by this Agreement, the Company will not change the conditions or rates of pay established by written agreement in effect between the Company and the employees hereunder, and the Union will not encourage or sanction employees stopping work or leaving the service, pending the determination or adjustment of the dispute in accordance with the procedures established by this agreement or by law.

The Company will instruct its supervisory employees as to the terms and conditions of this agreement and will discipline any employee who wilfully violates the terms hereof or advocates a policy contrary to that set out herein.

Inflation:

This Board specifically finds and certifies that the award herein rendered is consistent with the standards now in effect established by or pursuant to law for the purpose [12] of controlling inflationary tendency.

Certification:

We, the arbitrators in the proceedings to which this certificate is attached, hereby certify that this is a true and correct copy of the Award of the Board of Arbitration in said proceedings, as the same will be found in the file in the office of the Clerk of the District Court of the United States, Southern District of California.

OTTO S. BEYER

Chairman

WILLIAM A. GILLESPIE

Member

EDWARD S. SHATTUCK

Member

[Verified.]

[Endorsed]: Filed Jul. 26, 1946. [13]

In the District Court of the United States, in and for the
Southern District of California
Central Division

No. 5598 O'C. Civil

In the Matter of
WESTERN AIR LINES, INC., ET AL.

JUDGMENT CONFIRMING AWARD

There having been filed in the clerk's office of this court at Los Angeles, on July 26th, 1946, a certified copy of an arbitration award, and no petition having been filed to impeach the said award within ten days thereafter, under Sec. 159, 2nd, of Title 45 of U. S. C., and this court having, under date of November 1st, 1946, entered a minute order confirming the award with instructions to the party interested to prepare a judgment confirming the award, and no judgment having been prepared by the interested party,

It Is Now By the Court Ordered that the said award be, and the same is hereby, confirmed.

Dated: Los Angeles, Calif., November 21st, 1946.

J. F. T. O'CONNOR

Judge

Judgment entered Nov. 21, 1946. Docketed Nov. 21, 1946. Book C. O. B., page 579. Edmund L. Smith, Clerk; by Francis E. Cross, Deputy.

[Endorsed]: Filed Nov. 21, 1946. [14]

[Title of District Court and Cause]

PETITION FOR ORDER TO SHOW CAUSE

Comes now your petitioner, the Division of Labor Law Enforcement, and shows:

I.

That it is a duly authorized, qualified and acting division of the Department of Industrial Relations of the State of California created by Chapter 1, of Division 1 of the Labor Code of the State of California, and as such is authorized to prosecute this proceeding.

II.

That prior to the filing of this petition a written agreement to arbitrate certain issues of dispute dated May 10, 1946, was filed in the above-entitled matter pursuant to the provisions of the National Railway Labor Act; that a copy of said agreement is attached hereto, marked "Exhibit A", and made a part hereof by reference; and that said agreement to arbitrate was entered into on behalf of and for the benefit of the employees of the Western Airlines, Inc. hereinafter named. [15]

III.

That the said agreement to arbitrate provides in section "eleventh" thereof that the award of the Board of Arbitration as to wage rates shall become effective January 1, 1946, and remain in effect for sixty (60) days from the date of the award, which date was July 26, 1946.

IV.

That on July 26, 1946, the Board of Arbitration duly appointed under the provisions of the Railway Labor Act, and in pursuance thereof, duly rendered and filed its Award in the above-entitled matter; and that on November 21, 1946, no petition being filed to impeach the said Award within ten days thereafter, the said Award became final under the provisions of the Railway Labor Act, and Judgment Confirming Award was duly ordered by the above-entitled Court and entered on page 579 of Civil Order Book 40, of the records of said Court.

V.

That prior to the filing of this petition and subsequent to the entry of Judgment Confirming Award, certain former employees of the Western Air Lines, Incorporated, duly assigned their claims to your petitioner as provided by law for wages earned by each of them while in the employ of the said Western Air Lines, Incorporated, as follows:

<u>Name of Employee</u>	<u>Work Performed</u>	<u>Dates Worked</u>	<u>Amount of Retroactive Wages</u>
Gerald Z. Bondy	Aviation mechanic	1- 1-46 to 5-16-46	99.65
James J. Jardine	Aircraft mechanic	1- 7-46 to 6-21-46	129.76
Lamont W. King	Apprentice aircraft mechanic	1- 1-46 to 6- 2-47	<u>28.40</u>
Amount Carried Forward			\$229.41

<u>Name of Employee</u>	<u>Work Performed</u>	<u>Dates Worked</u>	<u>Amount of Retroactive Wages</u>
Amount Brought Forward			\$229.41
Lawrence R. Kyle	Aircraft & engine mechanic	1- 1-46 to 6- 4-46	106.08
John Edward Lewis	Aircraft mech.	1- 7-46 to 6-23-46	137.90
Walter J. McLaughlin	Aircraft and engine mechanic	1- 1-46 to 5-17-46	57.65
Joseph Thos. McMahon	Aircraft mechanic	4-15-46 to 5-31-46	31.17

VI.

That the amounts of retroactive wages stated in paragraph V hereof constitute the difference between the wage rates paid the said employees and the wage rates provided in the Award on file in the above-entitled matter.

VII.

That the Western Air Lines, Inc. admits that the employees named in paragraph V hereof were employed by it for the period set forth therein, rendered services and performed work for the said period as therein stated, and it further admits that the amounts of retroactive wages as stated in the said paragraph V are correct, that the same are unpaid, and that all of the aforesaid matters come within the provisions of the Award on file in the above-entitled action.

VIII.

That the amount of retroactive wages set forth in paragraph V hereof are due, owing and unpaid, and that al-

though demand has been made therefor, the Western Air Lines, Inc. refuses and continues to refuse to pay the same upon the ground that the employment of each of the assignors of your petitioner named in paragraph V hereof terminated on the last dates specified in the column headed "Dates Worked", all of which dates were prior to the date of the Award, to wit: July 26, 1946, on file in the above entitled matter. [17]

IX.

That the Western Air Lines, Inc. in refusing to pay the retroactive wages hereinabove set forth, unlawfully fails, neglects, and refuses to comply with the Award and the Judgment Confirming Award rendered in the above-entitled action.

Wherefore, petitioner prays that this Court issue an order to the Western Air Lines, Inc. to show cause why it should not comply with the Award and Judgment Confirming Award heretofore rendered and entered in the above-entitled matter.

Dated: June 6, 1947.

DIVISION OF LABOR LAW ENFORCEMENT,
DEPARTMENT OF INDUSTRIAL RELATIONS,
STATE OF CALIFORNIA,

Petitioner,

By PAULINE NIGHTINGALE &
EDWARD M. BELASCO,

Attorneys for Petitioner,

By PAULINE NIGHTINGALE

[Verified.] [18]

EXHIBIT A

This Agreement, made and entered into this 10th day of May, 1946, between Western Airlines, Inc., and Inland Air Lines, Inc., (hereinafter referred to as the party of the first part), represented by Paul E. Sullivan, Vice President and Secretary, Western Air Lines, Inc., and Secretary and Treasurer, Inland Air Lines, Inc., and employees in the service of the above-named carriers by air (hereinafter referred to as the party of the second part) represented by the Airline Mechanics Department—United Automobile Workers—CIO as follows: Mechanics (Western Air Lines, Inc., and Inland Air Lines, Inc.); employees of Western Air Lines, Inc., classified under the Cargo Clerks, Stock Clerks, and Fleet Service Men Agreement with Western Air Lines, Inc., and including Jr. Stock Clerks, Stock Chaser, Stock Clerk, Stock Clerk in Charge, Senior Stock Clerk, Fleet Service Men, Passenger Service Supply Clerk, Senior Passenger Service Supply Clerk, Cargo Handlers, Assistant Cargo Clerks, Cargo Clerks, Utility Men, Cleaner, Janitor, Chief Cleaner, and Plant Protection Men.

Witnesseth: The parties hereto mutually agree and stipulate as follows:

First: The above-named carriers by air are carriers subject to the Railway Labor Act, as amended; the above-named employees are employees of such carriers by air; and the above representatives are the duly accredited representatives of such carriers by air and employees respectively.

Second: The controversy between the parties hereto, as hereinafter specifically stated, is hereby submitted to

arbitration, and such arbitration is had under the provisions of the Railway Labor Act.

Third: The Board of Arbitration (hereinafter referred to as "the Board") shall consist of three (3) members.

Fourth: The specific questions to be submitted to the Board for decision are as follows: Shown in Appendix "A" and Appendix "B" and made a part hereof.

Fifth: In its award the Board shall confine itself strictly to decision as to the questions so specifically submitted to it. [19]

Sixth: The questions, or any part thereof, as submitted, may be withdrawn from arbitration on notice to that effect signed by the duly accredited representative of the parties hereto and served on the Board, or upon the Chairman of the Board, at any time prior to the making of the award.

Seventh: The signatures of a majority of the members of the Board affixed to its award shall be competent to constitute a valid and binding award.

The Board shall make a specific finding and certification that the award is consistent with the standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies.

Eighth: The Board shall begin its hearings prior to the expiration of the period of fifteen (15) days from the date on which the last arbitrator necessary to complete the Board is appointed.

Ninth: The Board shall make and file its award prior to the expiration of the period of fifteen (15) days from the date on which the Board begins its hearings, but the

parties hereto may agree, at any time prior to the making of such award, upon the extension of such period (whether or not previously extended).

Tenth: The Board shall hold its hearings in the City of Los Angeles, State of California.

Eleventh: The award of the Board shall become effective as of January 1, 1946 and as to schedule "B", appended hereto, shall remain in effect for one (1) year and thereafter subject to thirty (30) days notice under provisions of Section 6, Title I, of the Railway Labor Act, as Amended. As to schedule "A", appended hereto, the award of the Board shall become effective January 1, 1946 and remain in effect for sixty (60) days from the date of such award and subject to change thereafter under provisions of Section 6, Title I, of the Railway Labor Act, as Amended.

Twelfth: The award of the Board and the evidence of the proceedings before the Board relating thereto, certified under the hands of at least a majority of the members of the Board, shall be filed in the Clerk's office [20] of the District Court of the United States for the Southern District of California, Central Division, Los Angeles, California.

Thirteenth: Such award and proceedings so filed shall constitute the full and complete record of the arbitration.

Fourteenth: Such award so filed shall be final and conclusive upon the parties hereto as to the facts determined by the award and as to the merits of the controversy decided.

Fifteenth: Any difference arising as to the meaning, or the application of the provisions, of such award shall

be referred for a ruling to the Board, or to a sub-committee of the Board agreed to by the parties hereto; and such ruling, when certified under the hands of at least a majority of the members of such Board, or, if a sub-committee is agreed upon, at least a majority of the members of the sub-committee, and when filed in the same District Court Clerk's office as the original award, shall be a part of and shall have the same force and effect as such original award.

Sixteenth: The respective parties to the award shall each faithfully execute the same.

Seventeenth: This agreement constitutes the entire agreement between the parties to submit the controversy to arbitration.

Signed on behalf of the party of the first part by Paul E. Sullivan, and on behalf of the party of the second part by William A. Gillespie, International Representative, this day and year as above written.

FOR THE CARRIERS:

By /s/ Paul E. Sullivan
Paul E. Sullivan
Vice President & Secretary,
Western Air Lines, Inc.
Secretary & Treasurer
Inland Air Lines, Inc.

FOR THE EMPLOYEES:

By /s/ William A. Gillespie
William A. Gillespie
International Representative

Witness:

/s/ Wm. F. Mitchell, Jr.

Mediator

National Mediation Board. [21]

City of Los Angeles)
 County of Los Angeles) ss
 State of California)

On the 10th day of May, 1946, before me personally appeared Paul E. Sullivan and William A. Gillespie, to me known to be the persons described in and who executed the foregoing agreement, and duly acknowledged the execution thereof.

Seal

/s/ Earnest H. Brown

Notary Public

Notary Public and for the County of Los Angeles
 State of California

My Commission expires Dec. 5, 1948 [22]

APPENDIX A—WAGES

UAW-CIO has submitted the following demands and proposals to the carriers all of which said demands and proposals have been rejected by the carriers and are now in controversy:

Apprentice Mechanics	1st 3 months	\$.80 per hour
	2nd 3 months	.92 per hour
	2nd 6 months	1.00 per hour
	3rd 6 months	1.12 per hour
	4th 6 months	1.18 per hour
Mechanics	1st 3 months	\$1.32 per hour
	4th to 9th month	1.38 per hour
	9th to 12th month	1.46 per hour
Senior Mechanics	1st 3 months	\$1.46 per hour
	4th to 9th month	1.52 per hour
	9th to 12th month	1.58 per hour

Lead Mechanics	1st 3 months	\$1.58 per hour
	4th to 9th month	1.66 per hour
	9th to 12th month	1.72 per hour
Inspectors	1st 3 months	\$1.66 per hour
	4th to 9th month	1.72 per hour
	9th to 12th month	1.78 per hour
Crew Chiefs		\$1.80 per hour
Stock Chaser	1st to 4th month	\$.86 per hour
	4th to 9th month	.92 per hour
	9th to 12th month	.98 per hour
Junior Stock Clerk	1st to 4th month	\$.86 per hour
	4th to 9th month	.92 per hour
	9th to 12th month	.98 per hour
Stock Clerk	1st to 4th month	\$1.06 per hour
	4th to 9th month	1.12 per hour
	9th to 12th month	1.18 per hour
Stock Clerk in Charge	1st 6 months	\$1.18 per hour
	Thereafter	1.26 per hour
Senior Stock Clerk	1st 6 months	\$1.26 per hour
	Thereafter	1.32 per hour
Cargo Handlers	1st 6 months	\$.94 per hour
	Thereafter	1.00 per hour
Asst. Cargo Clerk	1st to 4th month	\$1.00 per hour
	4th to 9th month	1.06 per hour
	9th to 12th month	1.12 per hour
[23]		
Cargo Clerks	1st to 4th month	\$1.12 per hour
	4th to 9th month	1.18 per hour
	9th to 12th month	1.24 per hour

Passenger Service	1st 6 months	\$.90 per hour
Supply Clerk	Thereafter	.96 per hour
Senior Passenger	1st 6 months	\$1.02 per hour
Service Supply Clerk	Thereafter	1.08 per hour
Cleaner		\$.94 per hour
Chief Cleaner		1.05 per hour
Janitor		\$.94 per hour
Utility men	1st 6 months	\$1.18 per hour
	Thereafter	1.24 per hour
Fleet Servicemen	1st to 4th month	\$.90 per hour
	4th to 9th month	.96 per hour
	9th to 12th month	1.02 per hour
Plant Protection Men	1st 6 months	\$.94 per hour
	Thereafter	1.00 per hour

In addition to the rates set forth in Schedule "A" employees required to work on the afternoon shift shall be paid an additional six (6) cents per hour and employees required to work on the night shift shall be paid an additional eight (8) cents per hour. [24]

APPENDIX B—WORKING CONDITIONS

UAW-CIO has submitted the following demands and proposals to the carriers all of which said demands and proposals have been rejected by the carriers and are now in controversy:

1. Any employee required to perform work on the sixth day shall be paid at the rate of time and one-half.

Any employee hereunder required to perform work on the seventh day shall be paid at the rate of double time.

2. Time in excess of eight (8) hours per day exclusive of meal periods for monthly paid employees at stations other than Burbank, California, Salt Lake City, Utah, and Cheyenne, Wyoming, shall be considered overtime and shall be paid for at the rate of time and one-half in accordance with the provisions of this section, or by mutual consent, may be given time off to compensate therefor at the overtime rate.

3. (a) The following days are designated as holidays:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day
Washington's Birthday

(b) All employees hereunder shall be given the above holidays off with straight time pay but if required to work on said holidays the employee or employees shall be paid at the rate of double time.

(c) An employee required to work on said holidays and who fails to report for work shall not be paid any compensation for that day.

(d) If any of the above holidays fall on the employee's regular scheduled days off, the following regular work day shall be observed as the holiday.

[Endorsed]: Filed Jun. 9, 1947. [25]

[Title of District Court and Cause]

ORDER TO SHOW CAUSE

Upon reading the verified Petition of the Division of Labor Law Enforcement of the State of California, filed herein on June 9th, 1947, and good cause appearing therefor

It Is Hereby Ordered that the Western Air Lines, Incorporated appear before me at 10 . M., o'clock on the 30th day of June, 1947, at Court Room 7, Federal Building, 312 North Spring Street, Los Angeles, California, and show cause why it should not comply with the Award and Judgment Confirming Award heretofore rendered and entered in the above-entitled matter.

It Is Further Ordered that a copy of the verified Petition of the Division of Labor Law Enforcement of the State of California and of this Order be served upon the Western Air Lines, Incorporated, at least 10 days before the date of appearance on this Order.

Dated: June 9, 1947.

J. F. T. O'CONNOR

Judge United States District Court

[Endorsed]: Filed Jun. 9, 1947. [26]

[Title of District Court and Cause]

STATEMENT OF REASONS IN OPPOSITION TO
ORDER TO SHOW CAUSE

Comes now Western Air Lines, Inc., through its undersigned attorneys, and opposes the petition for Order to Show Cause filed herein by Department of Industrial Relations of the State of California as follows:

I.

The question and issue involved between the assignors of petitioner (and petitioner) and Western Air Lines, Inc., is whether ex-employees of Western Air Lines, Inc., that is, whether employees who terminated their employment prior to the date of the arbitration award, to wit, July 26, 1946, are entitled to the benefits of the arbitration award. This specific question was not submitted to the Board of Arbitration for decision. This conclusively appears by Paragraph Fourth of Exhibit A of the petition and the questions presented as shown by Appendix A and Appendix B attached to said petition. In accordance with the (Federal) Railway Labor Act, Section 9, Sub-paragraph Second, such award after filing in the clerk's office of the District Court "shall be conclusive on [27] the parties as to the merits and facts of the controversy submitted to arbitration." It follows, therefore, that there was only a judgment or a conclusive determination on the matters submitted to the Board of Arbitration and the question here presented was not one of the questions submitted to arbitration. Therefore, there has been no adjudication on the question here involved, and Western Air Lines, Inc., is entitled to have that question judicially determined. That question can-

not be adjudicated in such a summary manner as by an Order to Show Cause issued based on the arbitration award filed in this court.

II.

In view of the allegations of Paragraph VIII of the petition, it appears that a difference has arisen as to the application of the provisions of the arbitration award. In accordance with the agreement to arbitrate (Exhibit A to the petition) Paragraph Fifteenth thereof, it is provided that in the event of any difference arising as to the application of the provisions of such award, "such award shall be referred for a ruling to the board (of arbitration) or to a subcommittee of the board agreed to by the parties to the agreement to arbitrate." The (Federal) Railway Labor Act, Section 8, Sub-paragraph M thereof, likewise provides for that procedure. It thus appears that the petitioner and petitioner's assignors have failed to follow the procedure outlined by the (Federal) Railway Labor Act. The question here presented should have been referred back for a ruling to the arbitration board or to a subcommittee thereof. By reason thereof, petitioner has followed the wrong course of procedure.

III.

In any event, persons who were not employees of Western Air Lines, Inc., at the date the arbitration award was made, to wit, July 26, 1946, are not entitled to the retroactive wages. The obvious purpose of allowing employees retroactive wages [28] while an arbitration board is considering the question of wage increase is to keep the employees on the job and to avoid a strike. That is the moving consideration for such retroactive pay increase. Obviously, an employee who quits during that

period has eliminated the reason for retroactive pay. By reason thereof, such ex-employees are not entitled to the benefits of retroactive pay fixed by an arbitration award made after the employees have quit.

In re Goodyear Tire & Rubber Co., Vol. 2, Labor Arbitration Reports 367 @ 373.

Also reported in Vol. 5, Prentice-Hall Labor Service, Paragraph 67242, decided April 3, 1946.

IV.

It is observed that the moving party has failed to file a memorandum of points and authorities. Under such circumstances such failure may be deemed a waiver by the moving party of the motion.

Difani v. Riverside County Oil, 201 Cal. 210 @ 213.

Rule 3, Subdivision D, Local Rules, District Court of the United States.

In view of all the foregoing, it is respectfully urged that petitioner should be denied any relief under the Order to Show Cause, dated June 9, 1947, issued in this proceeding.

GUTHRIE, DARLING & SHATTUCK
MILO V. OLSON

Attorneys for Western Air Lines, Inc. [29]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 27, 1947. [30]

United States District Court
Southern District of California
Central Division
No. 5598-O'C Civil

In the Matter of
WESTERN AIR LINES, INC., et al.

ORDER OF COMPLIANCE

There was filed in the Clerk's office of this Court, at Los Angeles, on July 26, 1946, a certified copy of an arbitration award, and no petition having been filed to impeach the said award within ten days thereafter, under Sec. 159, 2nd, of Title 45 of U. S. C.; and this Court having, under date of November 1, 1946, entered a Minute Order confirming the award with instructions to the party interested to prepare a judgment confirming the award, and no judgment having been prepared by the interested party, the Court ordered that the award be confirmed. This order of the Court was made on November 21, 1946.

Thereafter, on June 9, 1947, the Petition for Order to Show Cause was filed in the above-entitled Court, which was directed to the Western Air Lines, Inc. to show cause why it should not comply with the award and judgment confirming the award rendered and entered. The Order to Show Cause came on before the Court on the 30th day of June, 1947, Pauline Nightingale, Esq., appearing for petitioner, and Milo V. Olson, Esq., appearing for the defendant Western Air Lines, Inc., and the Court having heard and considered the oral arguments, and the authorities submitted,

It Is Ordered that the defendant, Western Air Lines, Inc., is directed to comply with the award and judgment.

Dated: June 30, 1947.

J. F. T. O'CONNOR

Judge

Judgment entered Jun. 30, 1947. Docketed Jun. 30, 1947. C. O. Book 44, page 12. Edmund L. Smith, Clerk; by John A. Childress, Deputy.

[Endorsed:] Filed Jun. 30, 1947. [31]

[Title of District Court and Cause]

MOTION FOR AMENDMENT OF ORDER OF
COMPLIANCE

To the Western Air Lines, Inc., and its attorneys,
Guthrie, Darling & Shattuck, and Milo V. Olson,
Esqs.:

You and Each of You Will please Take Notice, that the Division of Labor Law Enforcement of the State of California will, on Monday, July 21, 1947, at the hour of 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, move the above-entitled Court in Court-room Number 7, Federal Building, 312 North Spring Street, Los Angeles, California, for an Order amending

the Order of Compliance heretofore rendered in the above-entitled matter on June 30, 1947, and entered in C. O. Book 44, page 12 of the records of the abovenamed court, as follows:

There was filed in the Clerk's Office of this Court, at Los Angeles, on July 26, 1946, a certified copy of an arbitration award, and no petition having been filed to impeach the said award within ten days thereafter, under Sec. 159, 2nd, of Title 45 of U. S. C.; and this Court having, under date of November 1, 1946, [32] entered a Minute Order confirming the award with instructions to the party interested to prepare a judgment confirming the award, and no judgment having been prepared by the interested party, the Court ordered that the award be confirmed. This order of the Court was made on November 21, 1946.

Thereafter, on June 9, 1947, a verified Petition for Order to Show Cause was filed in the above-entitled Court, by the Division of Labor Law Enforcement of the State of California, which was directed to the Western Air Lines, Inc., to show cause why it should not comply with the award and judgment confirming the award rendered and entered. The Order to Show Cause came on for hearing before the Court on the 30th day of June, 1947, Pauline Nightingale, Esq., appearing for petitioner, and Milo V. Olson, Esq., appearing for the respondent, Western Air Lines, Inc., and the Court having heard and considered the oral arguments, and the authorities submitted,

It Is Ordered that the respondent, Western Air Lines, Inc., comply with the award and judgment by paying the sum of \$562.21 to the Division of Labor Law Enforcement of the State of California as the duly authorized Assignee of Gerald Z. Bondy, James J. Jardine, La Mont W. King, Lawrence R. Kyle, John Edward Lewis, Walter J. McLaughlin and Joseph Thomas McMahan, former employees of the said respondent, on their claims for retroactive wages earned during the period from January 1, 1946, to June 23, 1946, inclusive.

This Motion will be based upon the pleadings and records on file in the above-entitled action and upon the ground of a clerical mistake arising from an omission in the Order of Compliance heretofore rendered under the provisions of Rule 60, Subdivision A of the Rules of Civil Procedure for the District Courts of the United States. [33]

Dated: July 15, 1947.

PAULINE NIGHTINGALE and
EDWARD M. BELASCO

Attorneys for Petitioner

By Pauline Nightingale

Received copy of the within Notice of Motion for Amendment of Order of Compliance. Dated July 15, 1947. Guthrie, Darling & Shattuck, Attorneys for Western Air Lines, Inc., Respondent; by Milo V. Olson.

[Endorsed:] Filed Jul. 16, 1947. [34]

In the District Court of the United States, in and for the
Southern District of California

Central Division

No. 5598 O'C. Civil

In the Matter of

WESTERN AIR LINES, INC., et al.

AMENDED ORDER OF COMPLIANCE

There was filed in the Clerk's office of this Court, at Los Angeles, on July 26, 1946, a certified copy of an arbitration award, and no petition having been filed to impeach the said award within ten days thereafter, under Sec. 159, 2nd, of Title 45 of U. S. C.; and this Court having, under date of November 1, 1946, entered a Minute Order confirming the award with instructions to the party interested to prepare a judgment confirming the award, and no judgment having been prepared by the interested party, the Court Ordered that the award be confirmed. This order of the Court was made on November 21, 1946.

Thereafter, on June 9, 1947, a verified Petition for Order to Show Cause was filed in the above-entitled Court, by the Division of Labor Law Enforcement of the State of California, which was directed to the Western Air Lines, Inc. to show cause why it should not comply with the award and judgment confirming the award rendered and entered. The Order to Show Cause came on for [35] hearing before the Court on the 30th day of June, 1947, Pauline Nightingale, Esq., appearing for petitioner, and Milo V. Olson, Esq., appearing for the respondent, Western Air Lines, Inc., and the Court having heard and considered the oral arguments and the

authorities submitted, made and entered its Order on June 30, 1947 directing the respondent, Western Air Lines, Inc., to comply with the award and judgment,

It further appearing that on July 16, 1947, a Motion for Amendment of the said Order of Compliance was filed by Petitioner and that the said Motion duly came on for hearing on the 21st day of July, 1947, Pauline Nightingale, Esq., appearing for Petitioner, and Milo V. Olson, Esq., appearing for the respondent, Western Air Lines, Inc., and the Court having heard and considered the oral arguments and authorities submitted;

It Is Ordered that the Order of Compliance heretofore rendered on June 30, 1947, be, and the same is hereby amended to direct that the respondent, Western Air Lines, Inc., comply with the award and judgment heretofore rendered and It Is Ordered that Respondent pay the sum of Five Hundred Sixty-two and 21/100 Dollars (\$562.21) to the Division of Labor Law Enforcement of the State of California, as the duly authorized Assignee of Gerald Z. Bondy, James J. Jardine, La Mont W. King, Lawrence R. Kyle, John Edward Lewis, Walter J. McLaughline and Joseph Thomas McMahon, former employees of the said respondent, in payment of their claims for retroactive wages earned during the period from January 1, 1946, to June 23, 1946, inclusive.

J. F. T. O'CONNOR

Judge

Dated: July 23, 1947.

Judgment entered Jul. 24, 1947. Docketed Jul. 24, 1947. Book C. O. B. 44, page 344. Edmund L. Smith, Clerk; by Francis E. Cross, Deputy.

[Endorsed]:' Filed Jul. 24, 1947. [36]

[Title of District Court and Cause]

NOTICE OF ENTRY OF AMENDED ORDER
OF COMPLIANCE

To the Respondent Western Air Lines, Inc., and to
Messrs. Guthrie, Darling & Shattuck, and Milo V.
Olson, its attorneys:

You, and Each of You, Will Please Take Notice that
the Amended Order of Compliance was duly entered July
24, 1947 on page 344 of Civil Order Book 44 of the
records of the above entitled Court.

Dated: July 25, 1947.

PAULINE NIGHTINGALE &
EDWARD M. BELASCO

Attorneys for Petitioner

By Pauline Nightingale [37]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 26, 1947. [38]

[Title of District Court and Cause]

NOTICE OF APPEAL

In Accordance With Rule 73

To the Above Entitled Court and to the Clerk Thereof, and to the United States Circuit Court of Appeals, Ninth Circuit, and to the Clerk Thereof, and to the Labor Commissioner of the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California, and to Pauline Nightingale and Edward M. Belasco, Its Attorneys:

To You, and Each of You, Notice is hereby given that Western Air Lines, Inc., defendant in the Order to Show Cause proceedings instituted by the Petition filed by the Division of Labor Law Enforcement of the State of California, filed herein on June 9, 1947, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the final order made in the above entitled proceedings, entitled "Amended Order of Compliance" entered in this action on July 24, 1947, in Civil Order Book 44, page 344, and from the whole thereof, said order having reference to aforementioned petition for Order to Show Cause.

GUTHRIE, DARLING & SHATTUCK
MILO V. OLSON

Attorneys for Appellant Western Air Lines, Inc. [39]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 8, 1947. [40]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 43 inclusive contain full, true and correct copies of Award; Judgment Confirming Award; Petition for Order to Show Cause; Order to Show Cause; Statement of Reasons in Opposition to Order to Show Cause; Order of Compliance; Motion for Amendment of Order of Compliance; Amended Order of Compliance; Notice of Entry of Amended Order of Compliance; Notice of Appeal and Designation of Contents of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$12.10 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 12 day of September, A. D. 1947.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Endorsed]: No. 11729. United States Circuit Court of Appeals for the Ninth Circuit. Western Air Lines, Inc., Appellant, vs. Labor Commissioner of the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed September 13, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Circuit Court of Appeals of the United States
in and for the Ninth Circuit

No. 11729

WESTERN AIR LINES, INC.,

Appellant,

vs.

LABOR COMMISSIONER OF THE DIVISION OF
LABOR LAW ENFORCEMENT, STATE OF
CALIFORNIA,

Appellee.

1. STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY.
2. DESIGNATION OF RECORD NECESSARY FOR CONSIDERATION THEREOF.

(Per Rule 19, (6).)

To the Above Entitled Court and to the Clerk Thereof:

I.

Appellant intends to rely upon the following points:

1. The District Court of the United States in and for the Southern District of California, Central Division, had no jurisdiction to make the summary order appealed from because the subject matter of the order was not part of the controversy submitted to arbitration. (Railway Labor Act, Section 9, Subdivision 2 thereof.)

2. Appellee followed the wrong procedure in the District Court on the Order to Show Cause proceeding. The dispute between appellant and appellee was as to the appli-

cation of the arbitration award. The Railway Labor Act, Section 8, Sub-paragraph M, provides that such matters are to be referred back to the Board of Arbitration or to a subcommittee thereof for a further ruling. The agreement to arbitrate, Paragraph 15, also so provides. Appellee ignored this procedure.

3. The assignors of appellee are not entitled to the retroactive pay increase granted by the arbitration award to employees of appellant, because such assignors were not employees at the time the arbitration award was made on July 26, 1946. In other words, the assignors of appellee had left the employ of appellant before the arbitration award was made on July 26, 1946, and hence they are not entitled to the benefits of the retroactive pay increase granted employees of appellant under such award.

II.

Appellant designates for printing the entire transcript.

Dated: September 22, 1947.

GUTHRIE, DARLING & SHATTUCK
MILO V. OLSON

Attorneys for Appellant, Western Air Lines, Inc.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 24, 1947. Paul P. O'Brien,
Clerk.

